

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

MOBIUS MANAGEMENT SYSTEMS, INC.,	:	
	:	
Plaintiff,	:	
	:	C.A. No. 05-346 SLR
v.	:	
	:	Reply Declaration of
ACARTUS, INC.,	:	<u>Jonathan M. Wagner</u>
	:	
Defendant.	:	
	:	

I, Jonathan M. Wagner, hereby declare:

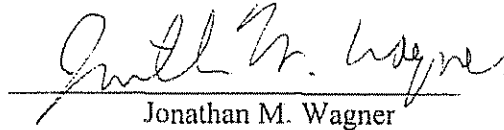
1. I am a member of the firm of Kramer Levin Naftalis & Frankel LLP, co-counsel with The Bayard Firm to plaintiff Mobius Management Systems, Inc. ("Mobius"). I respectfully submit this reply declaration, based on personal knowledge, in further support of Mobius' motion to compel the production of documents in response to its long pending document requests.

2. Acartus contends that Mobius' allegations of trademark infringement and false advertising "were taken care of promptly by Acartus upon learning of Mobius' concerns" because Acartus "promptly took down the advertisement and removed the allegedly offending references to Mobius' marks." (Acartus Br. at 1) That is not what happened. After Acartus assured Mobius that the offending statements had been removed from its website, Acartus posted a similar promotional piece elsewhere on the internet, which continued to misuse the Mobius trade name to promote Acartus' competing product. Shortly after finding the new promotional piece on the internet, Mobius moved for injunctive relief on these claims

3. Acartus continues to insist that Mobius' trademark and false advertising claims have been "effectively resolved" by the preliminary injunction stipulation, thus mooted the need for discovery. (*E.g.* Acartus Br. at 4). That is inaccurate. In an effort to resolve the trademark and false advertising issues, Mobius asked Acartus to agree to entry of a permanent injunction. To date, Acartus has refused to agree, making it necessary for Mobius to press forward with these claims. (Copies of the relevant correspondence are attached as Exhibit A).

4. Finally, to the extent Acartus objects to production on the ground that some documents are confidential, Mobius has proposed a confidentiality order (Exh. B, attached), modeled after an order entered by this Court in another case. To date Acartus' counsel has not responded to the proposed draft.

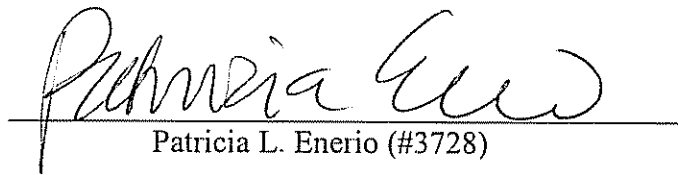
Pursuant to 28 U.S.C. §1746, I certify under penalty of perjury that the foregoing is true and correct. Executed this 2nd day of December, 2005.

  
Jonathan M. Wagner

**CERTIFICATE OF SERVICE**

Patricia L. Enerio, Esquire hereby certifies that on December 5, 2005, copies of the foregoing Declaration of Jonathan M. Wagner were served electronically and by hand delivery on counsel listed below:

Mary B. Graham, Esq.  
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Patricia L. Enerio (#3728)